


<b>Maricopa County Environmental Services Department Policy and Procedure</b>	DPPN: 10-00-06 ES* Page 1 of 8	Last Review 10/02
	<b>APPROVED:</b> 	
Initiating Department: Business Services Division	Issue Date 10/09/02	
Subject: Air Quality Violation Reporting and Enforcement	Next Review 10/04	

I. PURPOSE

The purpose of this policy is to provide a consistent reasonable process for documenting air quality violations, notifying alleged violators, and initiating enforcement action to ensure that violations are addressed in a timely and appropriate manner.

II. REFERENCE

Arizona Revised Statutes, Title 41 and Title 49, and Maricopa County Air Pollution Control Regulations.

III. APPLICABILITY

Air Quality Program personnel within the Department shall comply with this policy. Air Quality Program personnel include, but are not limited to, inspectors, engineers, supervisors, and enforcement officers (hereinafter referred to as "investigator").

IV. PROCEDURE

A. INSPECTION/INVESTIGATION

1. All inspections shall be conducted in accordance with Arizona Revised Statutes (A.R.S.) §41-1009 and §49-471.03, except that §41-1009, subsection L, paragraph 1 does not apply.
2. If consent to entry of a regulated premises for the purpose of conducting an inspection is denied while attempting to follow the procedures specified in A.R.S. §41-1009 and §49-471.03, Air Enforcement Section personnel shall assist the investigator in the preparation of all documents required pursuant to A.R.S. §49-488 to obtain a Special Inspection Warrant.
3. When a violation is discovered the investigator shall issue a Compliance Status Notification or Notice of Violation. For a violation described in paragraph 6 of this section, a Notice of Violation shall be issued to and signed by an owner, operator, or responsible official, or sent by

certified mail return receipt requested to the business address of an owner, operator, or responsible official.

4. A follow up inspection/investigation shall be conducted if a violation was not corrected at time of inspection. The findings of a follow up inspection/investigation shall be documented on the Compliance Status Notification or Notice of Violation. When a follow up inspection/investigation reveals the violation was not corrected the investigator shall issue a Notice of Violation. The Notice of Violation shall be issued to and signed by an owner, operator, or responsible official, or sent by certified mail return receipt requested to the business address of an owner, operator, or responsible official.
5. When a violation described in paragraph 6 of this section is discovered the investigator shall prepare a Department Report that describes where, when, and how events occurred that resulted in a violation. Department Report shall include name, title, address, telephone numbers, and any statements made by the violator and witnesses. Department Report shall include and refer to supporting evidence such as Compliance Status Notification and/or Notice of Violation, photographs, videos, compliance inspection reports, correspondence, records, other applicable documentation, and analytical tests.
6. An investigator shall submit a Department Report and supporting evidence to the Air Enforcement Section, via their supervisor and Section Manager, for violations that occur under the following conditions.
  - When the evidence clearly supports a violation of Regulation II, Rule 200, Section 305, Earth Moving Permit, and Regulation III, Rule 310, Fugitive Dust Sources, and Regulation III, Rule 310.01, Fugitive Dust From Open Areas, Vacant Lots, Unpaved Parking Lots, and Unpaved Roadways.
  - When a Compliance Status Notification or Notice of Violation was issued and the follow up inspection/investigation reveals the violation was not corrected and the violation continues.
  - Within the past five years a violator received any combination of 3 Compliance Status Notifications and/or Notices of Violation for the same or similar violation.
  - Major deviation from an air quality standard or requirement, such as, a Title V source submitting a Non-Title V permit application, making a facility change which would not qualify for a minor permit revision, removing regulated asbestos containing material improperly or without first filing required

notification, or operating process equipment without using a required control device.

- Evidence of willfully or knowingly violating air quality control laws and regulations.
  - Actual harm or a significant potential to harm any person, the public health, safety or welfare, and the environment.
7. An investigator, on a case-by-case basis, may submit a Department Report and supporting evidence for a violation other than those described in paragraph 6 above. Department Report shall include a description of circumstances that support additional enforcement. The investigator shall submit the Department Report and supporting evidence to the Air Enforcement Section via the Air Quality Division Manager.

#### B. ENFORCEMENT

Violations of Regulation II, Rule 200, Section 305, Earth Moving Permit, and Regulation III, Rule 310, Fugitive Dust Sources, clearly supported by evidence, shall be referred to the Air Enforcement Section. The Department Report and supporting evidence shall be reviewed by an Enforcement Officer and forwarded to the County Attorney when the violation is clearly supported by evidence. The referral to the County Attorney shall include an attachment, from an Enforcement Officer, recommending what action should be taken and what monetary penalty should be imposed, and the Justice Court precinct in which the violation occurred.

Other violations submitted pursuant to this policy shall be reviewed by an Enforcement Officer and, based on the evidence, the Enforcement Officer shall determine an appropriate response. Enforcement action will be initiated only for violations clearly supported by evidence. The Air Enforcement Section shall maintain records in EMS on the current status of an enforcement action.

Arizona Revised Statutes authorize the following enforcement action for any violation under the jurisdiction of the Air Pollution Control Officer (APCO).

##### 1. Order of Abatement by Consent

Pursuant to A.R.S. §49-511.E the APCO may enter into an Order of Abatement by Consent. The APCO may agree to accept monetary payments as part of the negotiated terms of an Order of Abatement by Consent. The terms of an Order of Abatement by Consent shall be determined by agreement of the parties. An Enforcement Officer is responsible for negotiating the terms of an Order of Abatement by Consent.

##### 2. Order of Abatement

Pursuant to A.R.S. §49-511 an Order of Abatement may be issued. An Order of Abatement is prepared by an Enforcement Officer and must be approved and signed by the APCO. Copies of an Order of Abatement will be sent to the Air Quality Division Manager, Compliance Section Manager, Investigator, Enforcement Officer, EPA, ADEQ, the County Attorney, and members of the Air Pollution Control Hearing Board.

When an Order of Abatement recipient requests a hearing before the Air Pollution Control Hearing Board, the Air Enforcement Section is responsible for scheduling and publicizing the hearing pursuant to A.R.S. §49-490 and §49-498.

An investigator shall conduct follow-up investigations to determine whether there has been compliance or non-compliance with the provisions of an Order of Abatement. Investigator shall send a follow-up investigation report to the designated Enforcement Officer.

### 3. Civil Complaint

Pursuant to A.R.S. §49-513 the APCO may refer a violation to the County Attorney and request the filing of an action in Superior Court seeking civil penalties. All violation referrals under this subsection will be the responsibility of the Air Enforcement Section.

### 4. Notice to Appear and Complaint (Criminal Complaint)

A.R.S. §49-502 authorizes the APCO to issue a Notice to Appear and Complaint. This legal remedy requires an Enforcement Officer to meet with the County Attorney's Office to review evidence and determine a course of action.

When a complaint is filed under this authority, Air Enforcement Section personnel are responsible for assisting the County Attorney's Office in all Justice Court related activities, including arraignments, pre-trial conferences, and meetings with defendants.

### 5. Injunctive Relief

Pursuant to A.R.S. §49-512 the APCO may refer a violation to the County Attorney and request the filing of an action for a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief provided by law. All violation referrals under this subsection will be the responsibility of the Air Enforcement Section.

### 6. Referral to County Attorney

See Addendum's A, B and C.

C. VIOLATION REPORTING

Violations discovered at Major Sources and Synthetic Minor Sources shall be entered and tracked in the AIRS database by Air Quality Division personnel. Reporting under this subsection shall follow the requirements of EPA's current edition of "The Timely and Appropriate (T&A) Enforcement Response to High Priority Violations (HPVs)".

D. PENALTY CALCULATION

Air Enforcement Section personnel shall utilize the "Maricopa County Air Quality Violation Penalty Policy" to calculate appropriate settlement penalties for all violations except Asbestos NESHAP violations.

E. ASBESTOS PENALTY CALCULATION

Air Enforcement Section personnel shall assess Asbestos NESHAP violations by following the criteria set forth in the most current EPA document titled: "Asbestos Demolition and Renovation Civil Penalty Policy". Penalties shall be calculated by using the "Arizona Asbestos NESHAP Civil Penalty Policy Computation Worksheet" developed by the Arizona Department of Environmental Quality and approved by EPA.

F. ENVIRONMENTAL PROJECTS

When applicable, the "EPA Supplemental Environmental Projects Policy", effective May 1, 1998, may be utilized in developing settlement agreements to further Department goals to protect and enhance public health and the environment.

DISCLAIMER

This policy is intended solely as guidance for Department personnel. It is not intended and may not be used to create rights enforceable by any party. Nothing in this policy is intended to limit the Department's enforcement discretion. Deviation from this policy will not prevent the Department from pursuing an enforcement action that is otherwise appropriate to the violation. This policy may be changed at any time without public notice.

## **Addendum A**

### COUNTY ATTORNEY OPTIONS

Upon submittal to the County Attorney's Office, the County Attorney shall review the referral to determine if there is sufficient evidence to support a complaint. If so, the County Attorney may proceed as follows:

1. Settlement Conference with Violator

The County Attorney's Office may request a settlement conference with the violator prior to filing a complaint. If an agreement is reached, the parties will enter into a written settlement agreement that may include monetary penalties, reimbursement costs for investigation and prosecution, violator education, and other sanctions.

2. Filing of Criminal Complaint

The County Attorney's Office may file a criminal complaint if there is a reasonable likelihood of conviction. The matter may proceed to trial or the parties may enter into an agreement that may include monetary penalties, reimbursement costs for investigation and prosecution, violator education, and other sanctions.

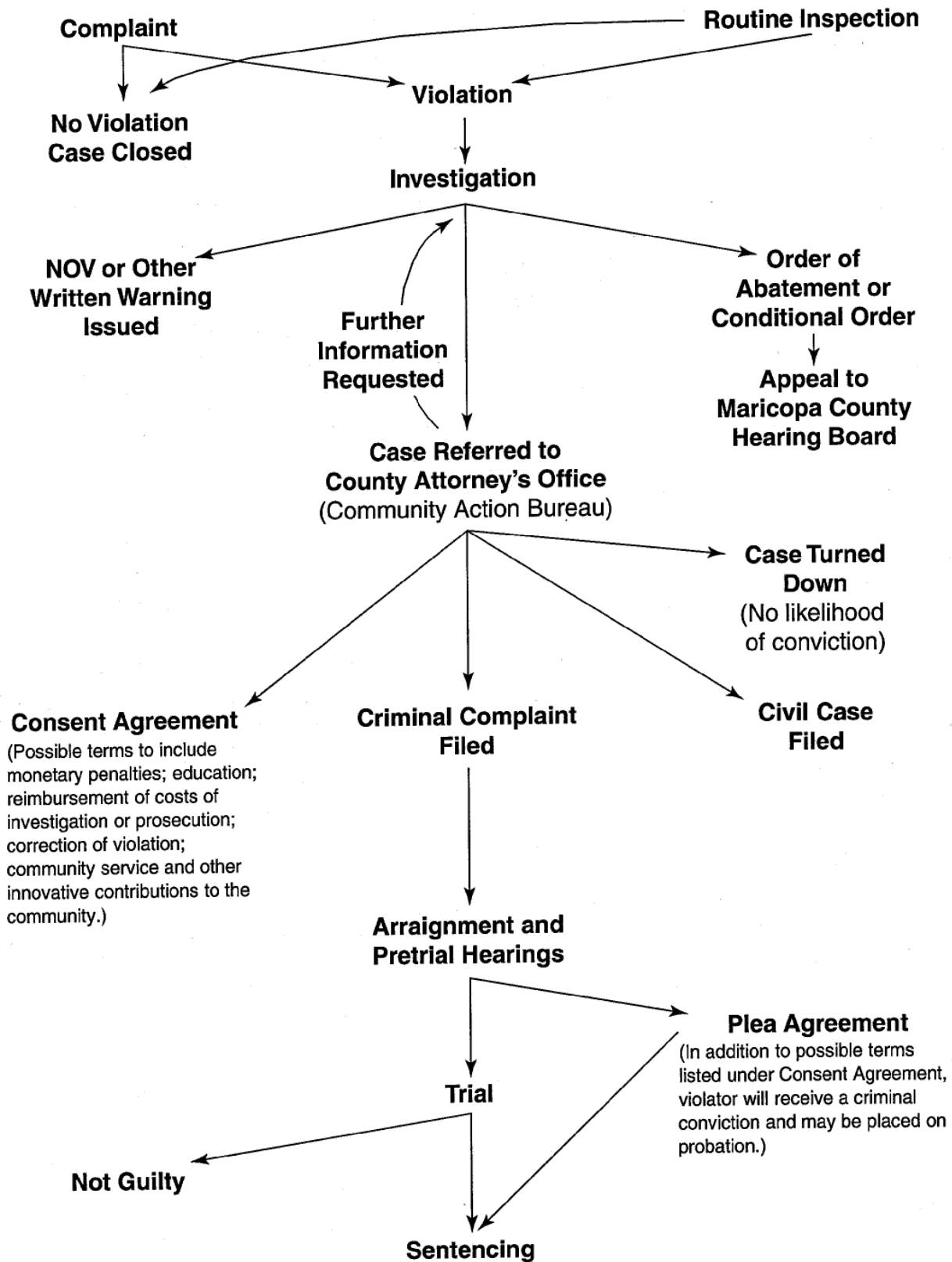
3. Filing of Civil Complaint

The County Attorney's Office may file a civil complaint seeking monetary penalties and injunctive relief.

After reviewing the submittal, if the County Attorney determines that there is insufficient evidence to support a complaint, the County Attorney may send it back to the Environmental Services Department for additional information or may turn it down.

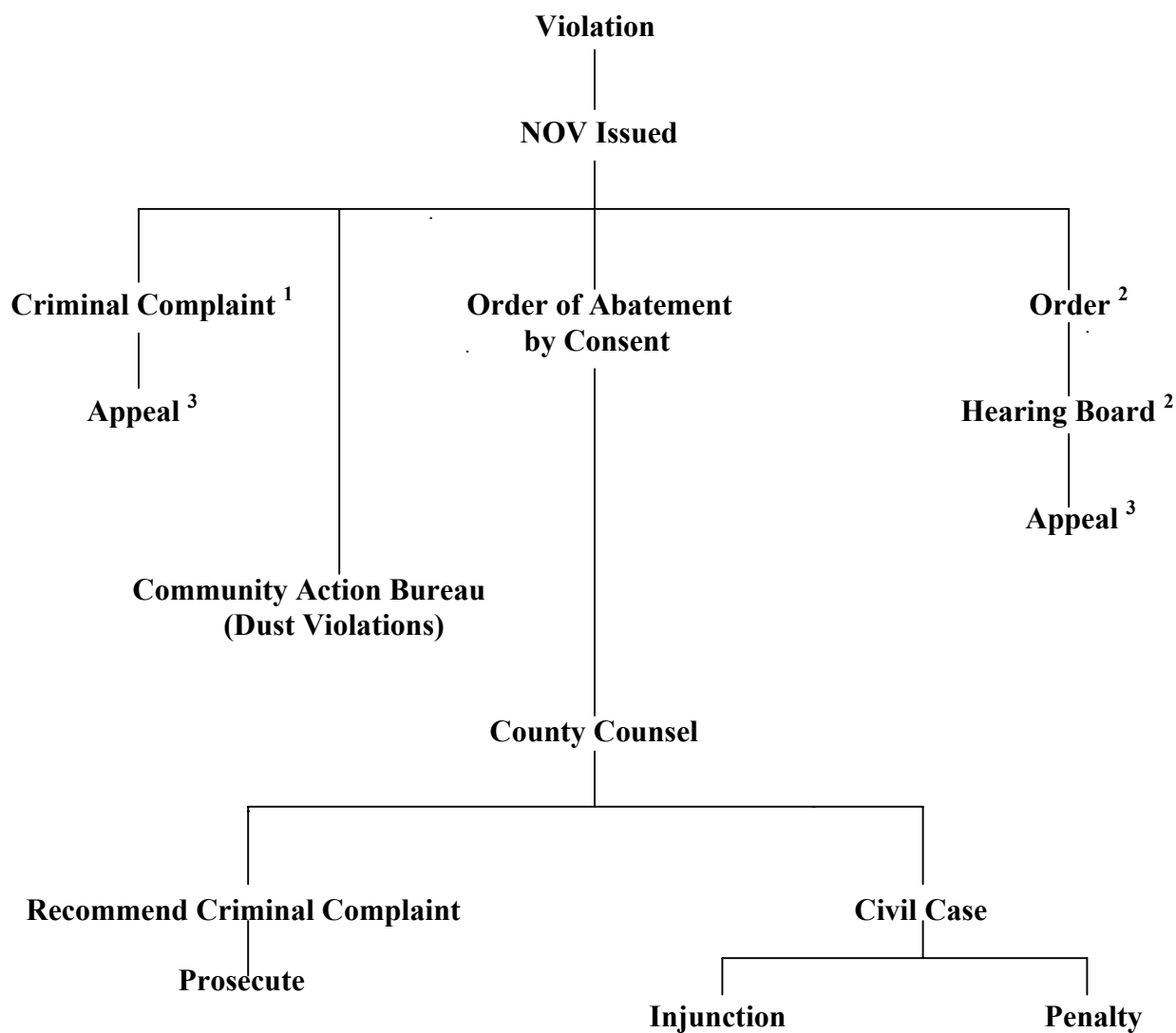
Addendum B

## Dust Control Case Flow



## Addendum C

# Air Enforcement Case Flow



### Notes:

<sup>1</sup> Pre-Filing meeting with County Attorney

<sup>2</sup> Administrative Order includes:

Permit approval and denial, reopening, revocation and reissuance,  
Order of Abatement, and Conditional Order.

County Counsel represents Department before Hearing Board.

<sup>3</sup> County Counsel handles appeals.

Settlement may be achieved at any stage, evidenced by a written agreement.

May refer Federally enforceable violations to EPA.